FILED OCTOBER 15, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **GREGORY CHANDLER,** **Member No. 158260,** A Member of the State Bar.	)	Case Nos. **07-O-10093-LMA** (07-O-11461; 08-O-11430; 08-O-11656) **DECISION**

I. Introduction

In this default disciplinary matter, respondent **Gregory Chandler** is charged with 11 counts of professional misconduct in four client matters, including (1) failing to perform competently; (2) failing to communicate with client; (3) failing to return unearned fees; (4) failing to render an accounting; (5) failing to avoid adverse interests; (6) making misrepresentations to the court; (7) committing acts of moral turpitude; and (8) engaging in unauthorized practice of law.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law in California for three years, that execution of suspension be stayed, and that he be suspended for a minimum of two years and until the State Bar Court grants a motion to

terminate his suspension (Rules Proc. of State Bar, rule 205) and until he makes restitution to a client.

II. Pertinent Procedural History

On April 21, 2009, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. Respondent did not file a response.

Respondent's default was entered on June 23, 2009, and respondent was enrolled as an inactive member on June 26, 2009. Respondent did not participate in the disciplinary proceedings. The matter was submitted for decision on July 20, 2009, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDCs are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on June 8, 1992, and has since been a member of the State Bar of California.

A. The Rothman Matter (Case No. 07-O-10093)

On or about May 10, 2005, Carol Rothman was involved in an automobile accident with a vehicle owned by Thomas and Elsa Tabor. At the time of the accident, the Tabors were insured by California Casualty Management Company ("CCMC").

On or about May 19, 2005, Rothman employed respondent to represent her regarding the injuries she suffered in the accident ("personal injury matter"). Rothman signed an attorney client fee agreement that entitled respondent to collect a contingency fee on Rothman's recovery.

On or about May 20, 2005, respondent sent a letter to claims adjuster Deborah Mohler of CCMC, indicating that he represented Rothman in the personal injury matter.

On or about May 23, 2005, respondent sent Rothman a letter enclosing a copy of his May 20, 2005 letter to CCMC and indicating respondent's understanding that Rothman would "accept the $6,400 offer" for her car.

On or about May 25, 2005, Rothman sent respondent a letter terminating respondent's services. Respondent received the letter of termination.

On or about May 25, 2005, Rothman retained another attorney, Christopher der Manuelian, to represent her in the personal injury matter.

On or about May 26, 2005, attorney der Manuelian sent a letter to Mohler indicating that he now represented Rothman and requesting that all future communications be directed to him.

On or about June 15, 2005, respondent sent Rothman a letter confirming receipt of her May 25, 2005 letter terminating respondent and requesting that Rothman contact him regarding her claim.

Rothman received the letter, but did not respond to it because she desired no further communication with respondent.

Between on or about June 15, 2005, and on or about November 22, 2006, there was no communication between Rothman and respondent.

On or about September 28, 2005, without Rothman's knowledge or consent, respondent informed Mohler that Rothman was finished receiving medical treatment for injuries arising out of the personal injury matter.

On or about October 26, 2005, without Rothman's knowledge or consent, respondent informed Mohler that he was still waiting for Rothman's medical bills.

On or about October 13, 2006, attorney der Manuelian sent CCMC a letter discussing the medical costs associated with Rothman's claim and demanding $6,500 in full and final settlement of the Rothman matter.

On or about November 21, 2006, respondent informed Mohler that Rothman would settle her personal injury claim for $3,650. In truth, Rothman had not agreed to settle the personal injury matter for $3,650.

Respondent had no authority to settle the personal injury matter on Rothman's behalf since Rothman terminated respondent on May 25, 2005.

On or about November 21, 2006, Mohler sent respondent a letter, with a copy to Rothman, enclosing a Release of All Claims on behalf of CCMC for Rothman to sign. In the letter, Mohler indicated that the settlement check for $3,650 was being sent under separate cover and would become negotiable once the signed release was received by CCMC.

Upon receipt of the November 21, 2006 letter, Rothman immediately called attorney der Manuelian to inform him of Mohler's letter.

On or about November 22, 2006, attorney der Manuelian sent a letter to CCMC stating that he, not respondent, represented Rothman in the personal injury matter.

On or about November 22, 2006, respondent sent a letter to CCMC asserting a lien against any settlement of the personal injury matter.

Between on or about May 25, 2005, and on or about November 21, 2006, respondent held himself out to Mohler as Rothman's attorney when respondent knew that he had no authority to represent Rothman after Rothman discharged him on May 25, 2005.

Count 1(A): Moral Turpitude and Dishonesty (Bus. & Prof. Code, § 6106)[1]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

By repeatedly holding himself out as Rothman's attorney in the personal injury matter between May 25, 2005, and November 21, 2006, to the insurance company when respondent knew that he had been terminated in May 2005, respondent committed acts of moral turpitude and dishonesty in willful violation of section 6106.

B. The de Hugard Matter (Case No. 07-O-11641)

On or about August 15, 1988, Nicholas de Hugard, a native and citizen of Australia, was granted Lawful Permanent Resident ("LPR") status in the United States.

On or about May 30, 2002, de Hugard was convicted of a violation of Health and Safety Code section 11377(a), possession of a controlled substance.

Before November 20, 2004, de Hugard travelled from his home in San Francisco to Australia. On or about November 20, 2004, de Hugard returned to San Francisco on a flight from Sydney, Australia. Upon arrival, de Hugard applied to the Department of Homeland Security ("DHS") for admission as a LPR. DHS refused to admit de Hugard as a LPR because it had concerns about his prior criminal conviction. Rather than admitting back into the United States as a LPR, DHS gave de Hugard a notice to appear for deferred inspection on December 29, 2004, with documentation regarding his prior criminal record.

On or about December 13, 2004, de Hugard's mother, Gillian Cropp, employed respondent to represent de Hugard at the December 29, 2004 inspection and paid respondent $1,000 as an advanced attorney fee.

[1] References to sections are to the provisions of the Business and Professions Code.

When respondent accepted payment from Cropp, he did not obtain de Hugard's informed written consent to accept payment from his mother.

Cropp provided respondent with the DHS order to appear on December 29, 2004. The order to appear stated that DHS denied de Hugard entry based upon questions about his criminal conviction.

Before the December 29, 2004 appearance, respondent did not obtain documentation regarding de Hugard's criminal conviction or instruct Cropp to obtain such documentation.

When respondent, de Hugard and Cropp appeared at the December 29, 2004 deferred inspection, respondent failed to present any evidence regarding de Hugard's criminal conviction. As a result, DHS revoked de Hugard's parole and initiated removal proceedings by issuing a Notice to Appear ("NTA") on February 2, 2005 for a master calendar hearing in the Immigration Court, file number A41-622-922.

Under the Immigration Court rules, de Hugard was required to attend all Immigration Court hearings or else the court could order him deported for failing to appear.

Soon after December 29, 2004, respondent received notice from DHS of the removal proceedings. But respondent failed to inform Cropp or de Hugard that de Hugard had been placed in removal proceedings.

On or about January 4, 2005, respondent faxed Cropp a letter stating that he hoped that "the entire matter will be irrelevant in that the Immigration Service will not contact [de Hugard] or [respondent]."

Before February 2, 2005, respondent did not inform de Hugard that he was required to attend the February 2, 2005 hearing or else he risked an immediate deportation order.

On February 2, 2005, respondent appeared before the Immigration Court for the master calendar hearing without de Hugard. The court continued the matter to March 16, 2005.

On March 16, 2005, respondent, de Hugard and Cropp appeared for the master calendar hearing. At the hearing, the court set the next master calendar hearing for June 15, 2005.

At the conclusion of the March 16, 2005 hearing, Cropp informed respondent that she and her husband were not available to attend the June 15, 2005 hearing and requested that respondent change the date since de Hugard relied upon family support throughout the immigration court process.

Thereafter, respondent failed to make any effort to change the June 15, 2005 hearing date.

On or about April 21, 2005, Cropp faxed respondent a letter reminding him that she and her husband were not available for the June 15, 2005 hearing and stated that she did not think the hearing should go forward since they could not attend.

On or about April 29, 2005, respondent sent Cropp and de Hugard a letter acknowledging that he knew they would be unavailable for the June 15, 2005 hearing and assuring them he would appear on de Hugard's behalf.

On or about June 10, 2005, respondent sent Cropp and de Hugard a letter again confirming that respondent would appear at the June 15, 2005 hearing on de Hugard's behalf. Respondent also stated that he would "inform the judge that 'family matters' prevent Nicholas de Hugard from being present."

Respondent knew, or should have known, that de Hugard was required to attend the June 15, 2005 hearing or else he could be subject to immediate deportation. But he did not inform deHugard or Cropp.

One June 15, 2005, respondent appeared at the master calendar hearing. De Hugard and Cropp were not present at the hearing. Respondent stated to the court that he did not know

where de Hugard was and that he had been unable to contact de Hugard's family before the hearing.

In fact, respondent knew that de Hugard did not attend the hearing because respondent failed to inform de Hugard that he was required to attend the hearing. And, he knew that Cropp was unable to attend the hearing because Cropp had asked respondent to change the hearing date.

Respondent made a misrepresentation to the Immigration Court when he claimed that he did not know where de Hugard was and that he had been unable to contact de Hugard's family before the hearing.

Because de Hugard was not present at the hearing, the judge closed de Hugard's case and ordered him removed in absentia.

One June 15, 2005, Immigration Judge Marilyn Teeter issued a decision finding that de Hugard was removable and that his "failure to appear and proceed with any applications for relief" constituted an abandonment of any pending requests for relief and waived any potential requests for relief.

On June 15, 2005, respondent was personally served with the notice of removal.

Thereafter, respondent failed to inform de Hugard or Cropp that due to de Hugard's failure to appear at the June 15, 2005 hearing, de Hugard was ordered removed.

On or about June 20, 2005, Nancy Alcantar, Field Office Director of DHS, sent respondent a letter indicating that de Hugard was required to report for deportation on August 15, 2005. After respondent received the letter, he still failed to inform de Hugard or Cropp of the deportation order.

Instead, on or about June 23, 2005, respondent sent Cropp and de Hugard a letter informing them that he went to court on June 15, 2005, and that he would contact them regarding any further hearings.

When respondent sent the letter, respondent knew or should have known that there would be no further hearings since the court closed de Hugard's matter as a result of the deportation order.

Respondent concealed from de Hugard and Cropp the fact that de Hugard was ordered deported as a result of his failure to appear at the June 15, 2005 hearing.

Respondent made a misrepresentation to de Hugard and Cropp by concealing from them that de Hugard was subject to deportation and by claiming that there would be further hearings when respondent knew that de Hugard's matter was closed as a result of de Hugard's failure to appear at the June 15, 2005 hearing.

On or about June 29, 2005, Cropp telephoned respondent and left a message requesting that respondent provide a status update on de Hugard's matter.

On or about June 29, 2005, respondent sent Cropp and de Hugard a letter indicating that the judge closed the case because de Hugard was not present in court and that the judge instructed respondent to file a motion to re-open the case. Respondent enclosed with the letter a photocopy of a motion to reopen which respondent claimed he had filed that day.

In his letter, respondent failed to inform Cropp or de Hugard that the Immigration Court ordered de Hugard deported and that until the matter was reopened de Hugard was subject to deportation.

Soon after June 29, 2005, the Immigration Court rejected respondent's motion to reopen because respondent failed to provide proof of payment of the filing fee.

On or about July 22, 2005, respondent sent Cropp and de Hugard a letter informing them that he required a check for $110 to file the motion to reopen.

On or about July 22, 2005, Cropp sent respondent a check for $110 and on or about July 23, 2005, the Immigration Court negotiated the check.

Thereafter, respondent failed to resubmit the motion to reopen with proof of payment.

Respondent failed to inform Cropp or de Hugard that respondent had paid the Immigration Court the filing fee, but that respondent had failed to file the motion to reopen.

Respondent concealed from Cropp and de Hugard the fact that he failed to properly file the motion to reopen and therefore de Hugard remained subject to deportation.

In or about August 2005, when Cropp telephoned the INS to find out the status of de Hugard's matter, she learned for the first time that de Hugard was on a list for deportation. According to the information Cropp received, "the clock had not started" for deportation.

In or about August 2005, after learning that de Hugard was on the deportation list, Cropp telephoned respondent. During that conversation, respondent informed Cropp that he would look into the status of de Hugard's matter and get back to her. Respondent led Cropp to believe that de Hugard's matter was still pending in Immigration Court and they were waiting for the Immigration Court to act.

Respondent concealed from Cropp that he had not filed the motion to reopen, that nothing was pending in Immigration Court, that de Hugard's matter remained closed and that de Hugard was subject to deportation.

On or about August 9, 2005, respondent demanded more money from Cropp to continue his representation of de Hugard in the immigration matter. Cropp refused to pay respondent any additional money and respondent refused to proceed on de Hugard's case.

From in or about September 2005 until in or about August 2006, Cropp regularly monitored de Hugard's immigration status by calling the DHS hotline. Each time she called, Cropp heard a recording that stated that de Hubard's status was that he was on a list for deportation but the "clock had not started." Cropp interpreted that to mean that the motion to

reopen her son's case was still pending and, as a result, de Hugard was not yet subject to deportation.

On or about March 7, 2007, de Hugard was arrested for violating a restraining order. From in or about March 2007 to in or about June 2007, de Hugard was placed in Immigration and Customs Enforcement ("ICE") custody.

On or about March 21, 2007, de Hugard employed attorney Sarah Kate Heilbrun, with Cropp's assistance, to represent him in the immigration matter.

On or about March 28, 2007, attorney Heilbrun sent respondent a letter alleging respondent mishandled the de Hugard matter and notifying him that a State Bar complaint had been filed against him and that the allegations were included in a motion to reopen she was filing on de Hugard's behalf.

On or about March 29, 2007, attorney Heilbrun filed a motion to reopen on de Hugard's behalf on the grounds that respondent provided ineffective assistance of counsel.

On April 23, 2007, the Immigration Court granted de Hugard's motion to reopen on the grounds that respondent provided ineffective assistance of counsel. In its decision, the Immigration Court found that respondent's representation at the June 15, 2005 hearing regarding his inability to contact de Hugard was fraudulent and deceptive. It also found that respondent misrepresented to Cropp and de Hugard that he had filed a motion to reopen the immigration case and that as result of his misrepresentation, de Hugard was unaware that he was required to file a motion to reopen.

As a result of respondent's misrepresentations, the Immigration Court granted the motion to reopen de Hugard's case.

On May 25, 2007, attorney Heilbrun filed on behalf of de Hugard an Application for Cancellation of Removal Proceedings.

On June 28, 2007, the Immigration Court granted the application and cancelled the removal proceedings.

Count 2(A): Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A)) [2]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

Respondent intentionally, recklessly and repeatedly failed to perform with competence in willful violation of rule 3-110(A) by failing to obtain records regarding de Hugard's criminal conviction before the December 29, 2004 hearing; by failing to present records regarding de Hugard's criminal conviction at the December 29, 2004 hearing; by advising de Hugard and Cropp that he "hoped that the entire matter will be irrelevant in that the Immigration Service will not contact" de Hugard when respondent knew that DHS had issued a NTA and initiated removal proceedings against de Hugard; by failing to seek a continuance of the June 15, 2005 hearing after Cropp requested that respondent seek the continuance due to her unavailability; by failing to advise de Hugard that de Hugard was required to attend the June 15, 2005 hearing or else he would face deportation; and by failing to file the motion to reopen de Hugard's case after it was closed due to de Hugard's failure to appear at the June 15, 2005 hearing.

Count 2(B): Avoiding the Representation of Adverse Interests and Accepting Compensation from a Non-Client (Rule 3-310(F))

To avoid any conflict of interest, rule 3-310(F) provides, in part, that a member must not accept compensation for representing a client from one other than the client unless the member obtains the client's informed written consent. Placed within the larger rule on avoiding the representation of adverse interests, rule 3-310(F) seeks to avoid the situation where a payer of fees might have an adverse interest to the client that could affect the representation.

[2] References to rules are to the Rules of Professional Conduct, unless otherwise indicated.

By failing to obtain de Hugard's informed written consent to allow Cropp to pay respondent's fees for representing de Hugard, respondent accepted compensation for representing a client from one other than the client without complying with the requirement that respondent obtain the client's informed written consent.

Because respondent had no written consent from de Hugard to permit a third party, his mother, to pay the fee for representing him, he willfully violated rule 3-310(F).

Count 2(C): Failure to Communicate (§ 6068, Subd. (m))

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to inform de Hugard that he was required to bring documentation regarding his criminal conviction at the December 29, 2004 hearing; that he was required to appear at the June 15, 2005 hearing; that he was subject to deportation as a result of his failure to appear at the June 15, 2005 hearing; that respondent failed to file the motion to reopen and as a result de Hugard remained subject to deportation; and that de Hugard was required to report for deportation on August 15, 2005, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count 2(D): Misleading a Judge (§ 6068, Subd. (d))

Section 6068, subdivision (d), prohibits an attorney from seeking to mislead the judge or any judicial officer by artifice or false statement of fact or law.

By clear and convincing evidence, respondent willfully violated section 6068, subdivision (d). Respondent made misrepresentations at the June 15, 2005 hearing when he

stated to the Immigration Court that he did not know where de Hugard was and that he had been unable to contact de Hugard's family before the hearing. By misrepresenting to the Immigration Court at the June 15, 2005 hearing that respondent did not know why de Hugard was not present at the hearing and that respondent was unable to make contact with de Hugard or Cropp in anticipation of the hearing, respondent sought to mislead a judge or judicial officer by an artifice or false statement of fact or law.

Count 2(E): Misrepresentation and Moral Turpitude (§ 6106)

Respondent made misrepresentations to de Hugard and Cropp by concealing from them that de Hugard was ordered deported as a result of de Hugard's failure to appear at the June 15, 2005 hearing; by concealing from Cropp and de Hugard that respondent failed to properly file the motion to reopen and therefore de Hugard remained subject to deportation; and by leading Cropp to believe during the August 2005 telephone conversation that de Hugard's matter still was pending in Immigration Court.

By making misrepresentations to de Hugard and Cropp, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

Furthermore, respondent made misrepresentations to the Immigration Court by claiming at the June 15, 2005 hearing that respondent did not know why de Hugard was not present at the hearing and that respondent was unable to contact de Hugard's family before the hearing, in willful violation of section 6106.

Because respondent sought to mislead the Immigration Court by a false statement of fact and was found to be culpable of willfully violating section 6068, subdivision (d) in count 2(D), and the misconduct underlying the violations of sections 6068, subdivision (d), and 6106 is the same, the court treats respondent's misrepresentation to the court as a single violation. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 221.)

C. The Lee Matter (Case No. 08-O-11656)

In or about 2004, Ms. Hyoung Ok Lee was served with divorce papers by her husband, a United States citizen. Lee is a native and citizen of North Korea. Lee's immigration status as a Conditional Resident Spouse ("CRS") was based on her marriage to a United States citizen.

Since Lee desired to remain in the United States after her divorce, she consulted with respondent regarding her immigration status and her divorce.

On or about November 23, 2004, Lee employed respondent to represent her in the dissolution matter, *Hill v. Lee*, San Francisco County Superior Court, case number FDI-04-757719 (the "dissolution matter") and to take actions necessary to permit Lee to remain in the United States after her divorce was complete (the "immigration matter").

At the time that she employed respondent, Lee signed a written fee agreement that required her to pay a $4,500 flat fee for the immigration matter and a $4,000 fee for the dissolution matter, which respondent wrote on the fee agreement as "type of fee in divorce to be determined."

The $4,500 flat fee Lee paid respondent for the immigration matter required respondent to represent Lee through the conclusion of her immigration matter.

Between in or about December 2004 and May 2005, Lee paid respondent a total of $8,500 in installment payments, which were the entire fees respondent set forth in the fee agreement.

On or about December 15, 2004, respondent filed a response in the dissolution matter on behalf of Lee.

Thereafter, respondent did not perform any further services in the dissolution matter on behalf of Lee. Respondent provided such minimal services in the dissolution matter that they were of no value or benefit to Lee.

Since the services respondent did provide in the dissolution matter were so minimal, respondent failed to earn any of the $4,000 that Lee paid him to represent her in the dissolution matter.

In or about December 2006, Lee terminated respondent and employed attorney Nancy Mermol to represent her in the dissolution matter.

On June 20, 2007, the court entered a Judgment of Dissolution of Marriage in the dissolution matter.

Between on or about November 23, 2004, and on or about March 16, 2006, respondent performed no services in the immigration matter.

On or about March 16, 2006, respondent filed a Petition to Remove the Conditions on Residence or Form I-751 with DHS on behalf of Lee. The submission requested a waiver of the joint filing requirement that normally requires both spouses to sign on the basis of the "termination of a good faith marriage through divorce of annulment." In the petition, respondent incorrectly stated that Lee's marriage had been terminated.

At the time that respondent filed the petition, respondent knew that Lee's dissolution of marriage was not yet final since respondent had taken no action to in the dissolution matter to finalize the divorce.

Respondent should not have filed the I-751 petition until Lee received a judgment of dissolution of marriage because the petition required that Lee provide proof that her divorce was final.

On or about August 16, 2006, respondent sent DHS a letter to supply further evidence in support of the petition he submitted on Lee's behalf. Therein, respondent affirmed that Lee's dissolution was not terminated and further stated that the dissolution was “processing” in San Francisco County Superior Court.

Thereafter, respondent failed to perform any additional services in the immigration matter.

On or about September 20, 2006, DHS sent respondent notice that Lee's I-751 petition was denied as a matter of law on the basis that her marriage was not yet terminated and thus she was ineligible for the relief sought by the petition.

The September 20, 2006 letter informed respondent that Lee was now deemed "out of status" or no longer legally present in the United States and ordered Lee to surrender her Alien Registration Card immediately.

The services respondent provided Lee on the immigration matter were of no value to her since respondent incorrectly filed the I-751 petition, which resulted in the request by the DHS that Lee immediately surrender her Alien Registration Card.

Respondent did not earn any of the $4,500 that Lee paid since the services respondent provided did not result in any benefit to Lee.

On or about October 6, 2006, respondent sent Lee a new "General Retainer" agreement wherein respondent demanded an additional $3,000 if Lee desired respondent to respond to the denial of her I-751 petition. Respondent termed the work to be performed under the second retainer agreement as "BCIS[DHS]/I-751(RE-APPLY)."

Thereafter, Lee insisted that respondent rectify the situation with DHS since respondent's actions resulted in the request that she surrender her Alien Registration Card rather than permitting her to remain in the United States after her dissolution.

But respondent refused to perform any further services without additional payment.

Subsequently, Lee terminated respondent and employed a new attorney to represent her in the immigration matter.

Respondent collected $8,500 in the advanced fees to represent Lee in the dissolution matter and the immigration matter.

Before on or about December 5, 2006, Lee employed attorney Robert Simon to assist her with her efforts to obtain a refund of the fees Lee paid respondent.

On or about December 5, 2006, attorney Simon wrote a letter to respondent requesting that respondent refund the $8,500 that Lee paid respondent to represent her in the dissolution matter and the immigration matter.

On or about December 6, 2006, respondent received Simon's December 5, 2006.

On or about December 6, 2006, respondent sent a letter to Simon claiming that respondent did not owe Lee a refund.

On or about December 8, 2006, attorney Simon sent respondent a letter requesting that respondent provide him with any billing statements and a full accounting of the services respondent provided Lee.

On or about December 8, 2006, respondent received Simon's December 8, 2006 letter.

Respondent was obligated to provide an accounting in the dissolution matter because respondent was employed to complete Lee's dissolution matter and the services respondent did provide were of almost no value to Lee. Respondent also was obligated to provide an accounting in the dissolution matter since respondent failed to set forth in the fee agreement whether the $4,000 fee was a flat fee charge or an hourly fee.

Respondent was obligated to provide an accounting in the immigration matter because respondent was employed to complete Lee's immigration matter, respondent failed to complete the immigration matter and the services that respondent did provide in the immigration matter were of no benefit or value to Lee.

On or about December 8, 2006, respondent sent a letter to attorney Simon refusing to provide an accounting on the grounds that he charged Lee a flat fee and in flat fee matters respondent was not required to provide an accounting.

Thereafter, respondent failed and refused to provide Lee with an accounting in either the dissolution matter or the immigration matter.

Count 3(A): Failure to Perform Competently (Rule 3-110(A))

By failing to perform any services in the dissolution matter other than filing a response to the petition, respondent recklessly, repeatedly and intentionally failed to perform legal services with competence in the dissolution matter, in willful violation of rule 3-110(A).

By incorrectly filing the I-751 petition before Lee obtained a final judgment in the dissolution matter and by causing Lee to be "out of status," and then refusing to rectify the situation without further payment, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in the immigration matter, in willful violation of rule 3-110(A).

Count 3(B): Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

Rule 4-100(B)(3) provides that an attorney must maintain records of all funds of a client in his possession and render appropriate accounts to the client. The obligation to render appropriate accounts to the client does not require as a predicate that the client demand such an accounting. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.)

Thus, by failing to provide Lee with an accounting of the attorney's fees respondent charged in the dissolution and the immigration matters, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession in willful violation of rule 4-100(B)(3).

Count 3(C): Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to refund the $8,500 to Lee, respondent failed to refund promptly any part of a fee paid in advance that had not been earned, in willful violation of rule 3-700(D)(2).

D. The Taylor Matter (Case No. 08-O-11430)

On or about April 20, 2006, respondent entered into a fee agreement with Alvin Taylor regarding a wrongful death and negligence claim against Dry Creek Rancheria Band of Pomo Indians, Dry Creek Gaming Commission (the "Commission") and other defendants.

On February 7, 2008, the State Bar Court issued an order in *In the Matter of Chandler*, State Bar Court case number 07-AE-14510, granting a motion for involuntary inactive enrollment against respondent as a result of respondent's failure to pay a fee arbitration award to Hyoung Ok Lee. Pursuant to the order, respondent's involuntary inactive enrollment took effect five days after service of the State Bar Court's order.

On February 7, 2008, the Court properly served respondent with a copy of the February 7, 2008 order, which respondent received.

On February 12, 2008, the State Bar placed respondent on involuntarily inactive status and therefore respondent was not entitled to practice law.

As of on or about February 12, 2008, respondent knew that he was involuntarily enrolled as an inactive member of the State Bar and was not entitled to practice law and would remain not entitled to practice law until he paid the arbitration award, paid costs and received an order from the court terminating his inactive enrollment.

On or about February 25, 2008, Vickie Wattles, Chairperson of the Commission, wrote a letter to Taylor stating that the Commission had not received a response from Taylor or respondent requesting documentation in support of his claim. Wattles also indicated that respondent appeared to be an inactive member of the State Bar and therefore was ineligible to

practice law in California and requested that Taylor inform her of his intentions in pursuing his claim.

On or about March 4, 2008, respondent wrote Wattles a letter on his law office letterhead insisting that he was entitled to practice law in California. The letter stated in the letterhead that respondent was an "attorney at law."

The letter instructed Wattles to direct all communications to respondent only and stated that it was improper for Wattles to send a courtesy copy of the February 25, 2008 letter to Taylor since respondent continued to represent Taylor.

On or about March 4, 2008, respondent wrote Wattles a second letter. The letter stated in the letterhead that respondent was "an attorney at law."

The letter also stated that Taylor was respondent's client and requested that she direct all communications in the Taylor matter to respondent only.

On or about March 11, 2008, Wattles sent respondent a letter indicating that since the State Bar website indicated that respondent was not entitled to practice law, she did not feel it was appropriate for her to continue corresponding with respondent regarding the Taylor matter until respondent provided her with certification from the State Bar indicating that respondent was entitled to practice law.

On or about March 17, 2008, respondent wrote a letter on his law office letterhead to Wattles. The letterhead contained the statement that respondent was an "attorney at law."

The letter requested that Wattles refrain from "improper conduct" in the Taylor matter. Respondent's reference to "improper conduct" was the fact that Wattles continued to assert that respondent was not entitled to practice law even after respondent asserted in his March 4, 2008 letter that he was entitled to practice law in California.

On or about March 24, 2008, respondent held himself out as Taylor's attorney to representatives of Healthcare Recoveries and requested that Healthcare Recoveries provide respondent with medical documentation regarding Taylor's wrongful death claim.

On or about March 24, 2008, respondent wrote a letter on his office letterhead to Wattles. The letterhead contained the statement that respondent was an "attorney at law" and indicated that Taylor was respondent's client.

The letter also indicated that respondent had contacted Healthcare Recoveries to request documentation and respondent would provide Wattles with documentation when it was available. The letter also asked Wattles to contact respondent if needed.

On or about June 4, 2008, respondent sent Wattles a letter on his office letterhead. The letter contained a statement that respondent was an "attorney at law" and indicated that Taylor was respondent's client.

The letter requested that Wattles provide information regarding the sovereign status of the Pomo Indians.

On June 12, 2008, the Supreme Court issued an order suspending respondent for failure to pay State Bar membership dues. The order indicated that respondent's suspension would be effective July 1, 2008.

On June 18, 2008, the State Bar properly served respondent with the June 12, 2008 order. Soon thereafter, respondent received notice that effective July 1, 2008, he would be suspended for failure to pay membership dues.

On July 1, 2008, respondent was suspended for failure to pay his State Bar membership dues.

On August 22, 2008, respondent filed a complaint in the matter entitled *Chandler v. Dry Creek Gaming Commission et al.*, San Francisco County Superior Court, case number CGC-

08-47903, alleging that the defendants in the wrongful death matter interfered with respondent's attorney-client relationship with Taylor by claiming that respondent was not entitled to practice law and by refusing to negotiate with respondent until respondent provided proof that respondent was entitled to practice law in California.

The caption on the complaint stated that respondent was "attorney for plaintiff" and that respondent was associated with the "Law Offices of Gregory Chandler."

The complaint alleged that respondent "is, and at all relevant times, [] [sic] an attorney at law."

Count 4(A): Unauthorized Practice of Law (§§ 6068, Subd. (a), 6125 and 6126)

Section 6068, subdivision (a), provides that a member of the State Bar has the duty to support the Constitution and laws of the United States and of the State of California. The State Bar charges that respondent violated section 6068, subdivision (a), by improperly holding himself out as entitled to engage in the practice of law in violation of sections 6125 and 6126.

Section 6125 provides that no person shall practice law in California unless he or she is an active member of the State Bar. Section 6126, subdivision (b), provides that any person who has been involuntarily enrolled as an inactive member of the State Bar or who has been suspended from practice and thereafter practices or attempts to practice law, advertises or holds himself out as practicing or otherwise entitled to practice law is guilty of a crime.

Charging an attorney with a violation of the duty to support the constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of discipline for the unauthorized practice of law. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574-575; *In the Matter of Tady* (Review Dept.1992) 2 Cal.State Bar Ct. Rptr. 121, 126.)

By holding himself out on his letterhead as an "attorney at law," by listing himself on the complaint as an "attorney" and listing the "Law Offices of Gregory Chandler" on the complaint, by claiming in the complaint and in his letters to Wattles that he was an attorney entitled to practice law, by holding himself out as Taylor's attorney to the Healthcare Recoveries representatives and by continuing to represent Taylor in the wrongful death matter after respondent was not entitled to practice and when respondent knew that he was not entitled to practice law, respondent held himself out as entitled to practice law and actually practiced law when he was not an active member of the State Bar of California in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

Count 4(B): Moral Turpitude (§ 6106)

Moral turpitude has been described as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal.2d 93, 97.) It has been described as any crime or misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. Crimes which necessarily involve an intent to defraud, or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472), grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358) and embezzlement (*In re Ford* (1988) 44 Cal.3d 810) may establish moral turpitude. Although an evil intent is not necessary for moral turpitude, at least gross negligence of some level of guilty knowledge is required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.)

By misrepresenting to the court and to Wattles that he was entitled to practice law when he was not an active member of the State Bar, by holding himself out as entitled to practice law when he was not entitled to practice law and by practicing law when he was not entitled to

practice law, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of section 6106.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,[3] stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).) But respondent's lack of a prior record of discipline in 12 years of practice of law at the time of his misconduct in 2004 is a mitigating factor. (Std. 1.2(e)(i).) "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269.)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing by abandoning the de Hugard and Lee matters, by failing to provide an accounting, by failing to return unearned fees, by committing multiple acts of moral turpitude and dishonesty, and by engaging in the unauthorized practice of law. (Std. 1.2(b)(ii).)

Respondent's misconduct harmed significantly his clients. Due to respondent's mishandling of their cases, de Hugard faced deportation and Lee faced the threat of losing her alien registration card. (Std. 1.2(b)(iv).) Lee has been deprived of her $8,500 funds.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to return the unearned fees to Lee

[3] Future references to standard(s) or std. are to this source.

even though his client had been given a fee arbitration award. In the Taylor matter, he was informed that he was not entitled to practice law; but he simply ignored the fact and insisted that he was the attorney-at-law.

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing an answer to the NDC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2(b), 2.3, 2.4, 2.6, and 2.10 apply in this matter.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.4 provides that culpability of a member's willful failure to perform services and willful failure to communicate with a client must result in reproval or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges two years of actual suspension and until respondent pays full restitution to Lee. In its brief, the State Bar listed a digest of cases regarding culpability and discipline. But giving such an encyclopedia of cases is not of any particular help to the court or to the State Bar's arguments.

Specifically, the court finds these cases to be instructive: *Lester v. State Bar* (1976) 17 Cal.3d 547; *Segal v. State Bar* (1988) 44 Cal.3d 1077; and *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, whose level of discipline ranges from six months to two years' actual suspension.

In *Lester*, the Supreme Court actually suspended an attorney for six months for failing to perform services in four matters, failing to refund any portion of advanced fees, failing to

communicate with clients and with misrepresentation. Aggravation included his lack of candor before the State Bar and general lack of insight into the wrongfulness of his actions.

In *Segal*, the attorney was actually suspended for one year for his misconduct in four matters, including failure to perform services, failure to return unearned fees, failure to communicate promptly, and issuance of two bad checks. He also had a prior record of discipline involving bad checks.

The Supreme Court in *Bledsoe* imposed a two-year actual suspension on an attorney who had abandoned four clients, failed to return unearned fees, failed to communicate with three clients, made misrepresentations to a client regarding her case status, and failed to cooperate with the State Bar. The attorney had also defaulted in the disciplinary proceeding. He had no prior record of discipline in 10 years of practice. Like *Bledsoe*, respondent did not participate in this proceeding and his misconduct involved dishonesty and moral turpitude.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Failing to appear and participate in the hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Respondent's failure to participate in this proceeding leaves the court without information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct.

Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding. Therefore, balancing all relevant factors – respondent's misconduct, the standards, the case law, the aggravating evidence and his lack of a prior record of discipline in 12 years of practice, the court concludes that placing respondent on a suspension

for a minimum of two years would be appropriate to protect the public and to preserve public confidence in the profession.

VI. Recommendations

A. Discipline

Accordingly, the court hereby recommends that respondent **Gregory Chandler** be suspended from the practice of law in California for three years, that said suspension be stayed, and that respondent be suspended from the practice of law for a minimum of two years, and he will remain suspended until the following requirements are satisfied:

1. He makes restitution to Hyoung Ok Lee in the amount of $8,643.75[4] plus 10 percent interest per annum from May 21, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to Hyoung Ok Lee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);
2. The State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure of the State Bar; and
3. He must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

[4] The amount of $8,643.75 was ordered in the Order Granting Motion for Involuntary Inactive Enrollment, State Bar Court case No. 07-AE-14510, filed February 7, 2008.

It is recommended that respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

B. Multistate Professional Responsibility Exam

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

C. California Rules of Court, Rule 9.20

Respondent must also comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order. Willful failure to do so may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.[5]

D. Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: October _____, 2009

LUCY ARMENDARIZ
Judge of the State Bar Court

[5] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)